those of s. 18 which, however, does not use the actual expression 'across the customs frontier'."

The provisions of section 167 item (8) of the Indian Sea Customs Act bear semblance to our section 131(1)(a) of the Customs Ordinance 1952. Although the wording of the two sections is somewhat different, I am inclined to think that they are in substance the same insofar as the point that I have to decide is concerned. With these observations I now approach the present case. In my view, section 131(1)(a) of the Customs Ordinance directly relates to importation of goods into the Federation contrary to the prohibition imposed, whether such prohibited goods are shipped, unshipped, delivered or undelivered. The offence of importation is complete when such goods, if carried by sea, have arrived within the limits of the customs port to which such goods are consigned. This is clear from the provisions of section 20 of the Customs Ordinance. If the rice is carried by sea and the vessel reaches the Federation port of consignment or the territorial waters, it is the moment of entry of the vessel which must be held to be the moment of importation of the rice. If anyone thereafter has any dealing with the rice, not having been in any way concerned with it earlier, he cannot be said to have been concerned in importation. The language employed by the legislature is wide. It is difficult to conceive how the legislature could have deliberately used wider terms than those employed in the paragraph in order to secure the punishment of anyone who may have anything to do in the process or operation which precedes the bringing of prohibited goods into the Federation. It is indicative of the fact that whoever imports into the Federation goods contrary to prohibition imposed is not the only person covered by the phrase "concerned in". The person who arranges to have the goods imported into the Federation contrary to the prohibition may be a person who is concerned in the offence as is mentioned in section 131(1)(a). Anyone interested or who consciously participates in any step whatever to promote or aid the object of illegally bringing goods into the Federation is caught within the purview of the section if such interest or involvement is at a stage prior to the completion of the offence of illegal importation.

In the present case there was importation when the ship conveying the rice arrived within the limits of Tumpat port. It was said that the consignment was for Kuantan. That contention was contrary to the evidence. The learned president found as a fact that the consignment was originally meant for Tumpat but that subsequently there was a change of plan. We are here concerned with the series of steps which constituted the act of importation at Tumpat. It is clear from the evidence that Chop Chin Hin, the respondents, had arranged for importation of the rice from the Bangkok firm who at their instruction had shipped them *via* Tumpat being the ultimate port of call. No import permit in respect of the said rice at Tumpat was obtained. Whatever was done subsequent to the act of importation is irrelevant for present consideration. Chop Hock Hin was not charged, and their interest may well be protected by the Minister under the provisions of section 125 of the Customs Ordinance.

If the change of plan is allowed to bring the case outside the meaning of the word "import", then the object of the Ordinance will be rendered nugatory. The case of *Heap Hoe & Co. Ltd., Penang,*[5] unreported in Selangor Criminal Appeal No. 32 of 1965, might well have to be decided the other way. The Privy Council case of *Canada Sugar Refineries Co.* v. *The Queen* [6] has no parallel because the facts there are dissimilar.

For the above reasons, I am of the view that the prosecution has established a *prima facie* case. I therefore direct the learned president to call for the defence in respect of both the charges.

Order accordingly.

Solicitors: *C. O. Lim & Co.*

WILLIAM WONG v. TAN YONG CHIM

[F.C. (Tan Ah Tah F.J., Chua & Winslow JJ.) June 6, 1968]

[Singapore — Federal Court Civil Appeal No. Y1 of 1968]

Practice and Procedure — Parties — Defendant — Amendment of writ to change defendant — Whether correction of a mere misnomer — Amendment sought after limitation period expired — Appearance of one party to stand as appearance of new defendant — Whether justified — Dispensation of service.

To an inquiry by the respondent's solicitors, the appellant's solicitors informed them that the owners of a certain vessel were a limited company called the "Winsen Steamship Company S.A.", carrying on business at a given address in Hong Kong. The respondent issued a writ addressed to the limited company. Finding that there was no trace of the limited company at the Registry of Companies in Hong Kong, the respondent amended the writ by addressing it to a firm which was carrying on a business having the same name and address as the limited company, and registered as a partnership at the Business Registration Office in Hong Kong. Subsequently, on being told that a foreign firm not carrying business within the jurisdiction could not be sued as a firm, the respondent amended the writ a second time by adding to it two individual defendants "trading as Winsen Steamship Company S.A.". The appellant, the first defendant, entered a conditional appearance and applied to have the writ and all subsequent proceedings set aside on the ground that the two defendants were never owners of the vessel in question. Thereupon, the respondent made a separate application to have the writ and all subsequent proceedings to be further re-amended showing the limited company as the defendant. The res-

pondent further applied for dispensation of service of the amended writ and statement of claim and for the conditional appearance entered by the appellant to stand as a good and valid appearance.

Buttrose J. who heard the applications together, granted the respondent's application in terms, and dismissed the appellant's application with costs.

The appellant appealed against both orders on the ground that the learned judge (i) should not have allowed the addition of a new defendant to the proceedings when the claim against such new defendant was time-barred; (ii) erred in ordering that the appellant's conditional appearance should stand as good and valid appearance. The respondent contended that the insertion of the new defendant constituted a mere correction of a misnomer and did not involve the addition or substitution of a new defendant.

Held, allowing the appeal: (1) as the firm and the limited company existed as separate entities and the writ had been addressed to the firm, a reasonable man receiving the writ would have been justified in thinking that despite the fact that the owners of the vessel in question were a limited company and despite the fact that this information had been given to the respondent, the firm was clearly the intended defendant. The amendment, therefore, involved the addition of a new defendant and was not merely the correction of a misnomer. The learned judge was accordingly wrong in allowing, by amendment, the substitution of a new party, the limited company, as defendants, the claim against whom was time-barred by the Hague Rules. Hence the order of the learned judge that the conditional appearance of the appellant should stand as an appearance for the limited company automatically fell to the ground;

(2) assuming that this was a case of a misnomer and not the substitution of a new defendant, the conditional appearance entered by the appellant could not be allowed to stand as an appearance for the limited company which had not been served at all. Dispensation of such service in the circumstances of this case was wrong.

Colgate-Palmolive (Asia) Ltd. v. *Swedish East Asia Co. Ltd.*(1) followed; *Dictum* of Devlin J. in *Davies* v. *Elsby Brothers Ltd.*(2) applied.

Cases referred to:—

(1) *Colgate-Palmolive (Asia) Ltd.* v. *Swedish East Asia Co. Ltd.* [1967] 1 M.L.J. 115, C.A.

(2) *Davies* v. *Elsby Brothers Ltd.* [1960] 3 All E.R. 675, C.A.

(3) *Whittam* v. *W. J. Daniel & Co. Ltd.* [1962] 1 Q.B 271.

FEDERAL COURT.

J. Grimberg for the appellant.

A. P. Godwin (*Ng Wing Cheong* with him) for the respondent.

Cur. Adv. Vult.

Winslow J.: A study of the history of the proceedings in this action until the making of the orders by Buttrose J. in chambers on 6th December, 1967 in S.C. No. 2487/67 and S.C. No. 2375/67 respectively, now under appeal, reveals a state of indecision and confusion on the part of the plaintiff/respondent and/or his advisers as to the identity of the party or parties who should have been sued by him in the first instance.

A specially indorsed writ in this action was issued on 26th October, 1966 to "Winsen Steamship Company S.A. a limited liability company incorporated in Panama and carrying on business at Room 11, New Henry House, 10, Ice House Street, Hongkong" (hereinafter referred to as "the limited company") claiming a sum of (M)$18,208.08, with interest, for breach of contract arising from a short delivery of 121 bags of coffee beans which ought to have been delivered to the plaintiff from the s.s. Winley which arrived in Singapore on 30th December, 1965 from Hongkong.

Before issuing this writ, however, it became necessary for the plaintiff, through his solicitors, to ascertain the name and address of the owners of this vessel at the material time so that the writ could be addressed to the correct defendant. In answer to an inquiry, therefore, Messrs. Drew & Napier, as solicitors for the agents of the owners, on 19th August, 1966 informed the plaintiff's solicitors that the owners were the limited company. This writ was issued to the limited company accordingly.

It then became necessary to have the writ served out of the jurisdiction and the plaintiff's solicitors instructed Messrs. Wilkinson & Grist in Hongkong to attend to the service of the said writ which the Sheriff of Singapore had sent to the Registrar, Supreme Court, Hongkong for service on the party named in the writ as the defendant as stated earlier.

On 10th January, 1967 Messrs. Wilkinson & Grist replied to the plaintiff's solicitors to the effect that a search at the Registry of Companies in Hongkong showed that no record could be traced there of the limited company which, as a company incorporated abroad, was required by their Companies Ordinance, if it had a place of business there, to file certain particulars with the registry, including the names and addresses of one or more persons, resident in Hongkong, authorised to accept service on that company's behalf. They, however, pointed out that a search at the Business Registration Office in Hongkong disclosed that, on 14th April, 1965, a business known as Winsen Steamship Company S.A. with the same address as that shown on the writ addressed to the limited company was registered as a partnership in the names of William Wong and Lim Tow Say and they asked for further instructions with regard to the manner in which service should be effected "upon the company. It would be easy for us to serve Mr. Wong as a partner or alternatively to serve the person having the apparent management and control of the firm at its business address. However, this may not be sufficient for you if you wish to take proceedings against the incorporated company in Singapore".

On 27th February, 1967 the plaintiff obtained leave to amend the writ by addressing it to Winsen Steamship Company S.A. (sued as a firm) at the same address, no doubt in the belief that Messrs. Drew & Napier had made a mistake as to the identity of the owners of the vessel concerned. It is significant however that no attempt was made to verify from Messrs. Drew & Napier what the true position was.

On objection being taken to the new form of the writ and to the fact that the new defendants, being a foreign firm not carrying on business within the jurisdiction, could not be sued as a firm, the plaintiff successfully applied on 22nd May, 1967 for leave to amend the writ again by showing 1. William Wong and 2. Lim Tow Say trading as Winsen Steamship Company S.A. as the defendants.

On 20th March, 1967 a conditional appearance was entered by William Wong.

On 9th October, 1967 the defence was filed on behalf of the two partners trading as a firm.

On 24th October, 1967 in S.C. No. 2375/67 the first defendant, William Wong, applied to have the writ and all subsequent proceedings struck out on the ground that the two partners were never the owners of the *s.s. Winley*.

On 7th November, 1967 in S.C. No. 2487/67 the plaintiff applied for the writ and all subsequent proceedings to be further re-amended to the form in which it originally was on 26th October, 1966, i.e., showing the limited company as the defendant. The plaintiff also applied for service of the writ and the statement of claim as so amended to be dispensed with and for the appearance entered by William Wong on 20th March, 1967 to stand as a good and valid appearance.

Both these summonses-in-chambers came before Buttrose J. on 6th December, 1967 who dismissed the first defendant's application in S.C. No. 2375/67, with costs, and granted the plaintiff's application in S.C. No. 2487/67, restoring, in effect, the *status quo* as it stood on the original writ, dispensing with service on the limited company and ordering that the appearance entered by William Wong on 20th March, 1967 should stand as a good and valid appearance for the limited company.

The first defendant, William Wong, has now appealed against both these decisions.

The first observation to be made on this appeal is that it is an appeal against two separate decisions in chambers although they were made on the same day.

Buttrose J. heard S.C. No. 2487/67 first. This was the plaintiff's application for leave to re-amend which he granted after hearing counsel for both parties. Having granted this application, he dismissed William Wong's application in S.C. No. 2375/67, to strike out the writ and all subsequent proceedings, without any further argument, as he must have considered that this followed from his earlier decision to grant the plaintiff's application to re-amend.

The grounds of appeal against both decisions, which can be dealt with together in view of their mutual dependency, are set out as follows:—

> "1. With regard to both summonses-in-chambers, that the learned judge should not
>
> (a) have allowed the addition of a new defendant to the proceedings, namely, the limited company known as Winsen Steamship Company S.A., when the claim against such new defendant was barred by the one-year limitation period provided in the bill of lading and incorporated legislation. The learned judge should accordingly have granted the defendant's application made by Summons No. 2375 and dismissed the plaintiff's application in Summons No. 2487;
>
> (b) have ordered the costs of the first defendant's Summons No. 2375 to be taxed and paid by the defendant when the plaintiff admits he has no valid claim against the first defendant, nor have ordered the costs of the plaintiff's Summons No. 2487 to be in the cause when the plaintiff himself was applying to amend.
>
> 2. With regard to the plaintiff's Summons No. 2487, the learned judge should not have ordered the appearance entered on 20th March, 1967, by the first defendant personally to stand as an appearance for the limited company".

With regard to ground 1 (a), it seems to me that the sole question for determination is whether the amendment granted whereby the limited company became the new defendant, constituted the mere correction of a misnomer or whether it involved the addition or substitution of a new defendant. On this question a number of cases were cited which this court considered in *Colgate-Palmolive (Asia) Ltd.* v. *Swedish East Asia Co. Ltd.*[1] In that case this court applied the test laid down by Devlin L.J. in *Davies* v. *Elsby Brothers, Ltd.*[2] in deciding whether a misnomer has taken place or not in the name of the writ. The test to be applied is: How would a reasonable person receiving the writ take it? If, in all the circumstances of the case and looking at the writ and statement of claim indorsed thereon as a whole, he would say to himself: "Of course it must mean me, but they have got my name wrong", then there is a case of mere misnomer which can be corrected. In the present appeal, Winsen Steamship Company S.A. (sued as a firm) were served in Hongkong and the question arises whether when service was effected on the firm as defendants at the same address as the limited company, the recipient of the writ must have said to himself: "Of course it means the limited company".

It should be remembered that two separate and distinct legal entitles were carrying on business at Room No. 11, New Henry House, 10, Ice House Street, Hongkong. One was the firm and

the other the limited company, both bearing the same name. William Wong was the managing partner of the firm as well as president of the limited company. The owners of the *s.s. Winley* were the limited company. The solicitors for the Singapore agents of the owners, Messrs. Drew & Napier, had indicated to the plaintiff in clear and unequivocal terms that the owners were the limited company. They must have been acting on information and instructions which no doubt reached the Singapore agents from Room No. 11 and it is almost certain that it was either William Wong or someone on his behalf who supplied this information unless the Singapore agents already knew who the owners were. The question therefore is whether William Wong or someone in Room No. 11 when served with the writ addressed to the firm would, as a reasonable person, have had no doubt in his mind that it was the limited company whom the plaintiff intended to sue and that he had simply got the name wrong. (See Donovan L.J. in *Whittam* v. *W. J. Daniel & Co. Ltd.*[3]).

In my judgment, a reasonable person would have had some doubt as to the identity of the party whom the plaintiff intended to sue. I do not think that he would have been convinced that the limited company was intended. The firm and the limited company were both in existence and the writ was addressed to the firm. A reasonable man receiving the writ would justifiably have said to himself, "Despite the fact that the *s.s. Winley* is owned by the limited company and despite the fact that this information has been given to the plaintiff, for some reason unknown to me, he insists on suing the firm. Therefor the firm is clearly the intended defendant".

It was submitted by counsel for the plaintiff that the defendant's lack of *bona fides* was apparent from the running of two businesses, that of the firm and that of the limited company, under the same name and at one and the same address in circumstances obviously designed to mislead the public, particularly where the initials "S.A.", which indicate that a concern is a limited company, are used to describe a partnership. The coincidence of the names is indeed a curious fact and one that the Registrar of Business Names in Hongkong may wish to consider. Whatever deception (if any) was intended, however, does not affect the *bona fides* of the defendant as revealed by the correspondence, in my view, because full disclosure was made to the plaintiff in August 1967 that it was the limited company which owned the *s.s. Winley*. I do not think that William Wong could have anticipated that the plaintiff and/or his solicitors would, in defiance of the clear information given to them, sue the wrong entity nor can I credit him with the fiendish foresight required to anticipate that this would happen.

I have therefore come to the conclusion that the further re-amendment allowed by Buttrose J. in S.C. No. 2487/67 involved the substitution of a new defendant. It is to be borne in mind that, by 6th December, 1967, the claim had become time-barred by article 3 rule 6 of the Hague Rules which provides a one year limitation period, and that any such substitution would have deprived the new defendant of the benefit of the time-limit imposed. Counsel for the plaintiff/respondent, however, did not admit the limitation period of one year under the Hague Rules. From the notes of argument recorded by Buttrose J. the limitation point was certainly taken by counsel for the defendant/appellant before him and the *Colgate-Palmolive* case, which is remarkably like the present one, was cited in support of the defendant's contention. It does not appear that counsel for the plaintiff disputed the one year limitation period though he does so now.

In the result, ground 1 (a) of the appeal succeeds. Ground 1 (b) relates to costs ordered by the judge and is dealt with later in connection with costs.

With regard to ground 2, it follows that the order in S.C. No. 2487/67 that the conditional appearance entered by the first defendant personally on 20th March, 1967 should stand as an appearance for the limited company, automatically falls to the ground. In any case, even if I had decided that this was a case of misnomer and not the substitution of a new defendant, I fail to see how a conditional appearance entered by the first defendant can be allowed to stand as an appearance for the limited company when the limited company has never been served at all. In the circumstances of this case, I think it was wrong to dispense with such service.

It further seems to me that, on the merits, the plaintiff has only himself to blame. One blunder after another has been committed in the course of these proceedings which could easily have been avoided if pains had been taken to check Lloyd's register as to ownership of the *s.s. Winley* or to communicate with the solicitors for the defendants as to the accuracy of the information supplied by them as to such ownership after the plaintiff's solicitors had heard from Messrs. Wilkinson & Grist in Hongkong.

The appeal is allowed in respect of both orders with costs both here and below.

The orders made in chambers are accordingly set aside.

The writ and all subsequent proceedings are struck out and the appellant will have the costs of the action.

Tah Ah Tah F.J. and **Chua J.** concurred.

Appeal allowed.

Solicitors: *Drew & Napier; Ng & Ng.*